



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.17814 of 2022
and WMP Nos.17156, 17158 & 19607 of 2023

M/s.Nahar Industrial Enterprises Limited
registered and administration office:
Focal Point, Phase IV, Ludhiana
through its authorised signatory
Munish Kumar Arora

... Petitioner

vs.

1.Micro and Small Enterprises
Facilitation Council, Coimbatore region
No.2, Raja Street
Coimbatore 641 001
Tamil Nadu
also at:
386, Patel Road, Ram Nagar,
Coimbatore, Tamil Nadu 641 009.

2.M/s.Unicon Engineers
having registered office at
513-a/6, Bharathi Street
Chinnavedampatty
Coimbatore 641 049.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of
India for issuance of a Writ of Certiorarified Mandamus to call for the



records of the impugned award dated 06.02.2018 passed by the Respondent No.1, as being arbitrary and without jurisdiction and in violation of the principles of natural justice and hence quash the same and further to direct the Respondent No.2 to contest C.S.No.4767 of 2017, pending on the file of the District Judge, Ludhiana.

For Petitioner : Mr.Thriyambak J.Kannan

For Respondents : Mr.B.Manoharan (for R2)

R1- No appearance

ORDER

The subject matter of challenge in the present writ petition pertains to the award passed by the 1st respondent dated 06.02.2018 on the ground that the 1st respondent lacks jurisdiction to pass such an award on the facts of the present case.

2. The case of the petitioner is that the 2nd respondent approached the petitioner on the ground that they are the manufacturers of New Age boilers and parts. Accordingly, the petitioner expressed their willingness to award a contract to the 2nd respondent for supply, erection and commissioning of the boilers. In terms of the orders that were placed, on completion of the work



satisfactorily, certain payments were also made by the petitioner to the 2nd respondent. There was some dispute between the parties and the same resulted in the petitioner filing a suit for mandatory injunction in CS No.4767 of 2017 before the Civil Court, Senior Division at Ludhiana, seeking for the relief of mandatory injunction directing the 2nd respondent to commission the boilers as per the Purchase order and to repair the existing boilers.

3. It is averred in the affidavit filed in support of the writ petition that the 2nd respondent instituted execution proceedings before the District and Sessions Court, Mohali, and the petitioner received the summons on 23.07.2021. Only on receipt of the same, the petitioner came to know that an award has been passed by the 1st respondent and hence, the petitioner took all efforts to get the necessary documents pertaining to the award passed. According to the petitioner, the delay in filing the writ petition challenging the award was occasioned due to the fact that the petitioner was not aware of the award passed by the 1st respondent and they came to know of that only after the execution proceedings were initiated by



the 2nd respondent.

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4. The petitioner has challenged the award passed by the 1st respondent mainly on the ground that the 1st respondent lacks jurisdiction since the contract in question is a works contract and that the Micro, Small and Medium Enterprises development Act, 2006, (hereinafter called as the MSMED Act) does not apply to works contract. Therefore, according to the petitioner, the principle of *coram non judice* will apply to the facts of the present case. Accordingly, the petitioner has sought for setting aside the award passed by the 1st respondent.

5. The 2nd respondent has filed a counter affidavit along with a petition to vacate the interim orders passed by this Court.

6. Insofar as the stand taken by the petitioner that the contract in question is a works contract and therefore, the 1st respondent lacks jurisdiction to pass the award, the 2nd respondent has taken the following stand :-



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4. I state that the brief facts of this case are, we had submitted the offer for the supply of Electrostatic precipitator to the Petitioner, after discussions the revised final Techno commercial offer dated 11-02-2016 & dated 13-02- 2016 were submitted, based on these two offers separate Purchase order No. REF/CPUR/NIEL/2016 dated 19.12.2016 for Rs 95,00,000/- and the purchase order No 4131600303 dated 12.03.2016 in petitioner's ERP format for the supply. Work order for Supply of new as per Petitioner offer delivery 3 months, hence the delivery period is 12-05-2016 as per the contract. The work order No. REF/CPUR/NIEL/2016 dated 18.02.2016 for Rs 20,00,000/- and the purchase order No 4131600354 dated 15.03.2016 in petitioner's ERP format for the erection and commissioning was released by the Petitioner herein. Work order for the Erection of ESP model number USH3F-6C75-EF1-WA-13-65-1. It is evident that the above two contracts are separate contracts for supply and services and not a works contract. As per the Punjab VAT act, the buyer must deduct the works contract tax and pay to



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government and issue a certificate of deduction for the works contract to the contractor and in this case no such deduction was made, and no such certificate was issued. Moreover, the value of the labour charges should be more than the supply involved, in the entire billing of supply contract was for supply only and the Petitioner had accepted and had issue the necessary C-form to that effect and hence this not a works contract and two separate contracts for supply and services and the petitioner's claim that is utter false and not maintainable.

7. Insofar as the stand taken by the petitioner as if they did not receive the summons and that they were not aware of the award passed by the MSME, the following stand has been taken by the 2nd respondent in the counter affidavit :-

10. It is humbly submitted that the 2nd Respondent, a small enterprise filed had intimated even before referring on 22.08.2017, 23.08.2017, 25.08.2017, 25.08.2017 and made the reference on under the



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MSMED Act 2006 on 11.09.2017. After receipt of the summons from the 1 Respondent, we intimated the same to the writ petitioner on 12.10.2017 attaching copy of the letter sent by the council seeking the remarks of the claims by the 2nd respondent. The first hearing was fixed on 27.10.2017 and the 2nd Respondent had received summon and scanned copy of the summon was sent by email on 14.10.2017 to the Petitioner herein. On receipt of above two communications from the 2nd respondent, the writ petitioner with malafide intention to escape from the proceedings under MSMED Act 2006, had filed Civil suit 4767 of 2017 on 13.11.2017 after two months from the date of the reference made and after one month from the receipt the intimation on the 1st hearing. Subsequent to filing of civil suit, the writ petitioner sent a communication dated 25.01.2018 stating that no further step be taken at MSME Council, Coimbatore due to the pendency of civil suit at



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Ludhiana On receipt of the summons from Hon'ble CJJD/RC Ludhiana. In the civil suit, we appeared through a counsel and filed their reply/written statement on 21.02.2018 and requested the writ petitioner to appear before the Council and submit their defence. The 2nd Respondent had also filed an application on 1.10.2018 under order 7 rule 11 of CPC to reject the plaint filed by the writ petitioner along with copy of the Award Passed by the Hon'ble Council. The writ petitioner had evaded the filing on reply to the petition filed under Or.7 Rule 11 of CPC application for 10 bearings and after giving several opportunities, the Hon'ble CJJD/RC Ludhiana had imposed costs for not filing the reply during the hearing on 17.08.2019. The 2nd respondent had submitted their oral arguments on several occasions and the writ petitioner is evading the submission of their arguments for the reasons best known to them and the matter is posted for hearing on 17.08.2022



for final arguments.

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8. The 2nd respondent has also dealt with the merits of the case and has sought for the dismissal of the writ petition.

9. Heard Mr.Thriyambak J.Kannan, learned counsel for the petitioner and Mr.B.Manoharan, learned counsel for 2nd respondent.

10. The petitioner had approached this Court by taking a specific stand as if they were not aware of the award passed by the 1st respondent and that they became aware only after the 2nd respondent had initiated execution proceedings before the District and Sessions Court, Mohali. This stand taken by the petitioner, on the face of it is not sustainable. The petitioner had filed a suit in CS No.4767 of 2017 before the Court of Civil Judge, Senior Division, Ludhiana, seeking for the relief of mandatory injunction against the 2nd respondent. Immediately after the summons was served on the 2nd respondent, the 2nd respondent had filed an application under Order

7 Rule 11 of CPC for rejection of plaint. It is apparent from the note



order dated 31.10.2018 that an application has been filed by the 2nd respondent for rejection of plaint and no reply has been filed and accordingly, the case was adjourned to 14.11.2018 for filing reply. It is seen from the application that at Paragraph No.5, there is a specific mention about the award passed by the 1st respondent and the copy of the award was also filed along with the application as Annexure A-1. In view of the same, the stand taken by the petitioner as if they were not aware about the award passed till they receive the summons in the Execution proceedings till July 2021, is totally unsustainable.

11. The petitioner while invoking the jurisdiction of this Court under Section 226 of the Constitution of India is expected to state the true facts and come to the Court with clean hands. In the absence of the same, the writ petition filed by the petitioner is liable to be dismissed on that ground alone. This Court always exercises a discretion while exercising its jurisdiction under Article 226 of Constitution of India and one such occasion where such discretion is exercised not to entertain the writ petition is where the



petitioner approaches this Court with untrue facts with unclean hands. The facts of the present case clearly falls under this category.

12. The learned counsel for the petitioner attacked the award passed by the 1st respondent mainly on the ground that the 1st respondent lacks jurisdiction to pass the award since the contract in question is a works contract and the MSMED Act does not apply to such works contract. To substantiate the same, the learned counsel for the petitioner also brought to the notice of this Court certain judgements passed in this regard.

13. It was further contended by the learned counsel for the petitioner that where the award has been passed without jurisdiction, it can be put to challenge at any point of time and even in collateral proceedings and it is governed by the principles of *coram non judice*. To substantiate this submission, the learned counsel for the petitioner relied upon the judgement of the Hon'ble Supreme Court in ***[Chiranjilal Shrilal Goenka Vs. Jasjit Singh and others]*** reported in 1993 2 SCC 507.



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14. In the considered view of this Court, the determination as to whether the contract in question is a works contract or a mere contract for supply or service, is a matter of fact. This fact can be determined only if the rival contentions are considered along with terms of the contract. According to the petitioner, the contract involved the supply, erection and commissioning work. According to the 2nd respondent, the contract pertains only to the supply of boilers. That apart, the 2nd respondent has also taken a stand that there was a separate contract for service and therefore, the present contract cannot be termed as a works contract. That apart, the records produced before this Court also shows that there is no separate deduction of Works Contract tax that is payable under the Punjab VAT Act. It is therefore clear from the rival claims made by both the parties that even to decide whether the contract is a works contract, it requires factual determination. Such factual determination can take place only if the petitioner had contested the reference that was filed by the 2nd respondent and had put forth their defence. In the absence of the same, it cannot be straight away



held that the 1st respondent lacks jurisdiction to pass the award on the mere *ipsi dixit* of the petitioner to the effect that the contract in question is a works contract.

15. In the light of the above discussion, this Court does not find any merits in this writ petition and accordingly, the same stands dismissed. Consequently, the connected miscellaneous petition is closed.

13.06.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No

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